

NSC Review Completed.

9 May 1978

NOTE FOR: DDA

FROM : AI/DDA

SUBJECT : New Executive Order to Replace E.O. 11652 on
Classification of National Security Information

1. The work on the new E.O. on classification began in April 1977 when the ICRC began drafting a Presidential Review Memorandum, ultimately issued as PRM-29 on 1 June 1977 (Tab A). The thrust of the PRM was greater openness in government.

2. An ad hoc committee was set up to draft a new E.O., co-chaired by Dr. Robert Gates of the NSC Staff and Richard Neustadt of the Domestic Council Staff. Part of the story of the intervening months since June has been the gradual education of Neustadt, whose naivete in these areas was apparently monumental. Gates, from all I've heard, is pretty sound. The issues identified for the ad hoc committee are at Tab B. [redacted] represented CIA and [redacted] represented the IC Staff on the committee. Tab C is [redacted] M/R on the first meeting of the committee.

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3. The work of the ad hoc committee, supported by a flow of comments from the agencies concerned, led to a meeting of the SCC on 26 July, at which certain issues were identified as requiring Presidential attention. The DCI attended. There is no evidence to suggest that the fundamental issue raised by Mr. Waller in his memo of 3 May 1978 was raised at this meeting. They appear to have accepted as inevitable a change from the "exemption" philosophy of E.O. 11652 to the "openness" philosophy of PRM-29. Tabs D and E provide summaries of the SCC discussion, and Tab F is a compilation put together by [redacted] summarizing the state of play in late July. It is too voluminous for you to bother with now, but the cover note is useful, and provides an indication of what we expected to happen next -- formal coordination during August and signature of the E.O. by 15 September, to be effective 1 January 1978.

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State Dept. review completed

STAT 4. Attention then turned to the drafting of an implementing directive, and [] coordinated the Agency position. But other problems took the heat off the new E.O. and the pace slowed to a crawl as the year closed.

5. In April a new version of the E.O. came in, reflecting a lot of work on the part of the drafting committee. The document is still flawed, but vastly improved over earlier versions. We provided comments in time for use by Lapham at a meeting on 10 April, at which the General Counsel of the interested agencies met to put the order in final form. Their work was reflected in a revised draft of 20 April, which reached the IG and stimulated his request for DCI action.

6. I am not a supporter of the order as written. The 20-year limit on classification (30-year for foreign government documents) will be extremely burdensome, and the implication that we can live with declassification after 6 years for the majority of our documents is ludicrous. But at least the order provides for review, not automatic declassification (which Neustadt wanted, I gather) and for extension of classification when necessary. It permits us to classify documents containing source and method information, and as noted it gives special recognition to the need to protect foreign government material. The establishment of an Information Security Oversight Office merely replaces the ICRC, but the President's decision to place this office in GSA is potentially bothersome. Still, if there is an issue, an Agency head can appeal to the NSC, so the implied subordination of the DCI in classification matters to the Director of ISOO is by no means unqualified. We can live with the order as written, in my estimation, though we'll pay a price for that requirement for 20-year review.

7. Mr. Waller's points are all perfectly valid, and many of them were argued over last summer. In the SCC discussions, and in their selection of issues to be referred to the President, the senior officers concerned, including the DCI, appear to have accepted the idea that PRM-29 called for this kind of an Executive order. It is a bit late to reopen a debate concluded and left behind months ago.



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Attachments: a/s

See afterthought, overleaf →

8. The original draft provided no exceptions to the classification rules of the E.O., but the DOD has obtained permission (in sec. 4e(3)) to establish special procedures for classified cryptologic information. Thus the solid "no exception" wall has been breeched, and we can theorize that other exceptions might be obtained. Politically a generalized exception would probably be harder to defend than one involving cryptology, widely accepted as having special security significance.

9. One further note on Waller's memo: I don't think he meant to link (in para 3) the 20-year review of every classified document with the authorities of the ISOO. Declassification guidelines are subject to ISOO review, but the DCI would not have to "seek document-by-document exemptions from the Director of this new office" when 20-year review reveals a need for continued protection. I must assume the IG was referring to the possibility of confrontation about classification "in violation of this order" as discussed in sec. 4(a)(3) on p. 10.

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
UNCLASSIFIED		CONFIDENTIAL	
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OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	DDA	10 MAY 1978	
2			
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4	RETURN TO: AI/DDA		
5			
6			
	ACTION	DIRECT REPLY	PREPARE REPLY
	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE
Remarks: <i>Some information about the new E.O. on classification, and a copy of the latest version, including some up-dating changes. A few other technical changes will probably be made, but here you have the substance of the proposed order.</i> <i>DJ</i>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
AI/DDA <i>DJ</i>			9 May 78
UNCLASSIFIED		CONFIDENTIAL	
		SECRET	

TAB

DDA 77-3353

9 JUN 1977

MEMORANDUM FOR: Director of Communications
Director of Data Processing
Director of Finance
Director of Logistics
Director of Medical Services
Director of Personnel
Director of Security
Director of Training
Chief, Information and Privacy Staff
Chief, Information Systems Analysis Staff

FROM : [REDACTED]
Assistant for Information, DDA

SUBJECT : Presidential Review of the Classification
System

1. Attached is a copy of PRM/NSC-29, signed by the President on 1 June, establishing an interagency committee to write a new Executive order on national security classification to replace EO 11652. [REDACTED] Associate General Counsel, is the CIA representative to this committee. In addition, [REDACTED] will represent the Intelligence Community Staff.

2. Over the past 5 years since EO 11652 was issued, people have complained about the apparently conflicting requirements and provisions of that order. This new committee and the Agency's participation provides us with an opportunity to make our views known and perhaps have an input into the new guidelines under which we will operate in the future. Your comments and suggestions on the present national security classification system or on any of the specific points outlined for study in the PRM would be appreciated. Please forward these to me by 17 June so that a meaningful package can be assembled for the Agency's committee representative.

Attachment: a/s [REDACTED]

cc: Associate General Counsel

STAT O/AI/DDA ydc (9 June 77)

Distribution:

Original - D/OC

1 - Each other addressee

✓ - DDA Subject

1 - DDA Chrono

1 - EML Chrono

ILLEGIB

DDA

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	D/DCI/IC				
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5	DDI				
6	DDA		X		
7	DDO				
8	D/DCI/NI		X		
9	GC	X			
10	LC				
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	A/DCI/PA				
17	AO/DCI				
18	C/IPS		X		
19	DCI/SS				
20	Legation		X		
21	Att. Press		X		
22	Outlets		X		
		SUSPENSE			
		Date			

Remarks:

Executive Secretary

3 June 1977

Date

STAT

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20505

Executive Registry

77-15372

DD/A Registry

77-3135

FOR OFFICIAL USE ONLY

June 1, 1977

Presidential Review Memorandum/NSC-29

TO: The Vice President
The Secretary of State
The Secretary of Defense

ALSO: The Attorney General
The Director, Office of Management and Budget
The Chairman, Joint Chiefs of Staff
The Director of Central Intelligence
The Administrator, Energy Research and
Development Administration
The U.S. Representative to the United Nations
The Archivist of the United States
The Counsel to the President

SUBJECT: A Comprehensive Review of the Classification
System

In order to provide for greater openness in government while at the same time effectively protecting sensitive national security information, I direct that a new Executive Order be prepared to replace Executive Order 11652. This new order should establish the government's policies with respect to the classification, protection and declassification of national security information and material.

The new Executive Order should be prepared by an ad hoc committee co-chaired by a member of the National Security Council Staff and the Domestic Council Staff. This Committee should consider:

--How to provide for the maximum release of information to the American public on government activities and policies consistent with the need to protect sensitive national security information;

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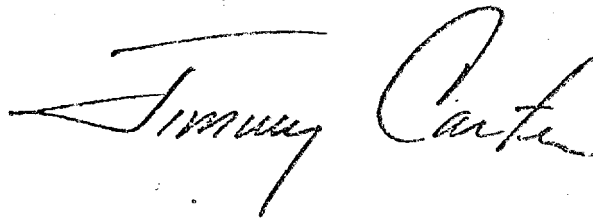
2

- How to promote increased public access to this information through a more rapid and systematic declassification program;
- Overlaps between the new Executive Order and the Freedom of Information Act as amended and the Privacy Act;
- Which information requires protection and for how long and what criteria should be used in making this judgment;
- Which categories of classified material more than 20 years old could be declassified in bulk under appropriate guidelines;
- How the classification system can be simplified to make it more understandable and easier to implement;
- How unnecessary and duplicative practices and procedures can be eliminated, reducing expenses;
- Whether the Departments and Agencies should prepare classification and declassification guidelines for their employees;
- What kinds of disciplinary actions can be taken to prevent the misuse of the security classification system by government officials.

The ad hoc Committee should carefully consider how best to implement the provisions of the new Executive Order. In this respect they should examine the role and the effectiveness of the Interagency Classification Review Committee.

The new Executive Order should be ready for my signature by September 15, 1977.

This Presidential Review Memorandum supersedes National Security Study Memorandum 229.



FOR OFFICIAL USE ONLY

Jul 3 1 18 PM '77

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TAB

DDA

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
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19	DCI/SS				
20	L. Lapham		X		
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SUSPENSE		Date			

Remarks:

Note ad hoc meeting 8 June.

STAT

D/ Executive Secretary

6 June 77

Date

3637 (5-77)

File D

27 July 1977

MEMORANDUM FOR THE RECORD

SUBJECT: SCC Meeting on PRM-29

1. The Senior Coordination Committee met on 26 July 1977 to act on changes to the present security classification system recommended by the PRM-29 Ad Hoc Committee, and to decide issues on which the Committee was unable to reach agreement. Dr. Robert Gates, NSC Staff, briefed me, Mr. Van Cook (Defense), Mr. Wells (ICRC), and Mr. Kienlen (OMB) on that meeting the next day. Dr. Gates said the SCC approved all Ad Hoc Committee recommendations as presented except as follows:

a. The location of the new Oversight Office will be determined by the President. OMB wanted it placed under the NSC Staff; the latter under OMB. SCC principals were all desirous of giving the Oversight Office enough authority to play an effective role in monitoring and improving the quality of the security classification system. All also agreed that this office should be in the Executive Office of the President.

b. Policies and procedures on secrecy agreements will be determined by the President. Admiral Turner argued for a government-wide secrecy agreement as a condition of access to classified information. The SCC consensus was that Justice would draft a minimum agreement to this end, and that re-execution would be required of those who have already signed a secrecy agreement.

c. All except ERDA agreed that paragraph marking should be mandatory, with exceptions for categories allowable upon by approval by the Oversight Office if requested by a department head. ERDA's dissent will be communicated to the President, with the statement that the new Executive Order will make such marking mandatory. ERDA also objected to the proposed level of authority for declassification actions, and wanted declassifying authorities to be of the same level as classifying authorities.

d. State and ERDA reserved their positions on classification criteria (which would determine classifiability) pending final expression in the draft Order. State expressed concern about the adequacy of protection under the system for foreign

77-3076

Executive Registry

77-1532

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20505

June 3, 1977

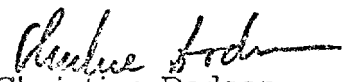
MEMORANDUM FOR

The Secretary of State
The Secretary of Defense
The Attorney General
The Director, Office of Management and Budget
The Chairman, Joint Chiefs of Staff
The Director of Central Intelligence
The Administrator, Energy Research and
Development Administration
The U.S. Representative to the United Nations
The Archivist of the United States
The Counsel to the President

SUBJECT: Comprehensive Review of the Classification System

There will be a meeting of the ad hoc committee created by PRM 29 at 2:30 p.m., Wednesday, June 8 in Room 305 OEOb to begin work on the new Executive Order called for in the PRM.

The meeting will be co-chaired by Dr. Robert Gates of the NSC Staff and Mr. Richard Neustadt of the Domestic Council Staff. An issues paper prepared at the Department of State is attached for your information. Will you please notify my office by noon on Tuesday, June 7 of your representative(s) who will attend this meeting.


Christine Dodson
Staff Secretary

Attachment



DEPARTMENT OF STATE

Washington, D.C. 20520

Issues to be Considered by ad hoc Committee
Under PRM/NSC

The following key issues shall be considered by the ad hoc Committee. Their guidance on these issues shall serve as the basis for the working group's drafting efforts. These issues are grouped under the appropriate point from the PRM.

1. Which information requires protection and for how long and what criteria should be used in making this judgment;

- what is "sensitive national security information"? Is the standard of E.O. 11652, i.e. "could reasonably be expected to cause damage to the national security" an adequate legal standard?
- Are the existing categories of E.O. 11652 (i.e. Top Secret, Secret, Confidential) meaningful? Should we re-define the categories, perhaps reducing them to two or increasing them to four?
- Should the new Executive Order establish special categories for information protected by statute, i.e. the DCI's responsibility for protection of intelligence sources and methods, and NSA's responsibilities for communications intelligence:

2. How to provide for the maximum release of information to the American public on government activities and policies consistent with the need to protect sensitive national security information; and

3. How to promote increased public access to this information through a more rapid and systematic declassification program;

- Can the automatic declassification system be modified or expanded to accelerate declassification or to reduce the amount of information that is exempted from automatic declassification? Are the periods for automatic declassification established by E.O. 11652 too long (i.e. 10 years for TS, 8 for S, 6 for C)?

- 2 -

- What can be done to increase the use of the automatic declassification system, or to use "specific event declassification," e.g. conclusion of a certain negotiation.
- Should more emphasis be placed on the Foreign Relations Series, or other Departmental publications, or on programs by the Archives to publish important papers?

4. Which categories of classified material more than 20 years old could be declassified in bulk under appropriate guidelines;

- Should the new Executive Order state which categories could be declassified in bulk after 20 years; or should the order state that everything must be declassified after 20 years except certain specific categories?
- If the former approach is selected, can the categories be adequately defined or should that be left to the Archivist to work out with the head of the Department or agency at the time of accession?

5. Whether the Departments and Agencies should prepare classification and declassification guidelines for their employees;

- Should the new Executive Order require departmental guidelines, or should they be optional? Will they encourage more or less classification?

6. Overlaps between the new Executive Order and the Freedom of Information Act as amended and the Privacy Act;

- Should the new Executive Order direct that all requests from a member of the public for classified information be treated as a request under the FOIA? (i.e. discard the separate mandatory review provisions of E.O. 11652?)

- 3 -

7. How the classification system can be simplified to make it more understandable and easier to implement;

- Should the new Executive Order be very short (so people will read it) with details in an annex or an NSC directive? (e.g. instead of lengthy sections on authority to classify and declassify, the order could simply say persons with authority to classify or declassify at a certain level will be designated in writing by the head of the Department or agency in accordance with the provisions of the annex).
- Could the automatic downgrading by step be eliminated? (Is it meaningful to say that Top Secret automatically goes to Secret after two years?)

8. How unnecessary and duplicative practices and procedures can be eliminated, reducing expenses;

- Should the order permit or prohibit additional protections such as the practice of "special clearances" or "compartmentalization"?
- Should the order require standardization of certain administrative matters such as cover sheets, forms, and accountability?

9. What kinds of disciplinary actions can be taken to prevent the misuse of the security classification system by government officials.

- Is the sanction in E.O. 11652 ("repeated abuse... shall be grounds for administrative reprimand") stiff enough? Should there be criminal sanctions for extreme misuses, such as use of classification to cover up criminal activities or gross mismanagement?
- Should the new Executive Order adopt an enforcement system based primarily on Departmental action? (One suggestion is the following: routine inspections of classification and declassification decisions, incorrect or poor decisions discovered in the inspections reported to individual's superior, head of the Department receives a yearly report of such reports and must certify to President or NSC that appropriate corrective steps have been taken).

- 4 -

10. Implementation and role of Interagency Classification Review Committee.

- Should the responsibilities and composition of the ICRC as established under E.O. 11652 be continued?
- If changes are appropriate, should the body
 - be given greater authority to enforce the order?
 - have responsibility for coordinating the executive branch policy on classification in response to FOIA requests and lawsuits?
 - be a body to which the public has a mandatory right of appeal (one would have to appeal to ICRC before going to court under FOIA)?
 - be chaired by the Vice President or prominent private citizen?

11. Other issues not mentioned in PRM;

- Should the new Executive Order require that each person who has access to classified information execute a standard secrecy agreement as a condition of being granted access?
- Should the new order establish procedures and standards for providing U.S. classified information to foreign governments?
- Should the ad hoc Committee consider the issue of what sanctions (civil or criminal) should be adopted, modified, or continued, for the unauthorized disclosure of classified information?

TAB

OGC 77-3700

9 June 1977

MEMORANDUM FOR THE RECORD

STAT FROM :
Associate General Counsel

SUBJECT : Organization under PRM-29

1. The first meeting of the PRM-29 group was held yesterday in the Executive Office Building chaired by Rick Neustadt of the Domestic Council Staff and Bob Gates of the National Security Council Staff. At Tab A is a list of attendees with addresses and telephone numbers.

2. Mr. Neustadt opened, by way of background, that the President is quite committed to this effort. It is intended as one of his actions to carry out his campaign promise of openness in government.

3. Bob Gates then took over and outlined his plans. The plans are that there will be two working groups, each of which would study issues and problems which PRM-29 and Executive Order 11652 present. At Tab B is his paper outlining the two charters for the two groups. Note my penciled comment on page two transferring that item from the Implementation and Review working group to the Classification and Declassification working group. Bob Gates asked Art Van Cook of Defense to chair the latter group and Bob Wells of ICRC to chair the former. Each agency is to be represented on both.

4. Attached at Tab C is a proposed work schedule also distributed by Bob Gates. The work schedule indicates that yesterday's ad hoc committee would not meet again until 13 July, the working groups in the meantime would be developing the options/issues/recommendations papers based on their charter assignments. This schedule was changed and the ad hoc committee is now to meet tomorrow primarily for the purpose of having the two working groups chairmen outline their plans and programs.

5. Mr. Gates made particular point of the fact that he and Neustadt have been in touch with staff members of the Senate Intelligence Committee and they propose to contact also Jim Davidson, Irene Margolis, and Tim Ingram, who are also staffers on the Hill with background and responsibilities in these areas. They had done this by way of inviting the participation of

significant Hill people and Gates urged that the working groups do the same.

6. It was noted that the PRM is unclassified and it seemed probable that most, if not all, documents produced in the course of the study would be also. It was urged, however, that all concerned be discreet, the point being to avoid over publication. It was suggested in this connection that in the event of press inquiries, the inquirer be referred to Jerrold Schecter of the White House Press Staff.

7. Gates referred to the report of the Attorney General's committee under PRM-11, insofar as it applies in this area, and noted that a number of issues were referred by that PRM group to the PRM-29 group.

8. He noted also that there are perhaps four major controversial issues:

(a) the intelligence community has abused the exemption authority, in effect they classify so much as to exempt themselves from the Order;

(b) the value, cost, etc. of compartmentation systems;

(c) there has been over classification and over exemption; and

(d) the relationship of classification problems and requirements to sources and methods information and cryptographic information.

9. I am asking [] to be the CIA representative on the Bob Wells subcommittee and [] our representative on the Art Van Cook subcommittee. We will need to communicate with various components and officials of the Agency on these subheadings as work develops and, in view of the tight schedule outlined, there will not be time for formal coordination throughout the Agency and at varying levels on all points. What we will attempt to do is get to the Agency people who have expertise and interests, insofar as we know them, so that we can participate in the work of these committees on that basis. It may be that we will take a position or make contributions at the subcommittee or at the ad hoc committee level which the Agency at a higher level may want to reject. I am sure the other agencies participating will have to do this also.

10. I think we will have to work closely with [] also and to some degree the IC and CIA memberships will merge and overlap.

Attachments

151-2255
Neustadt

ATTENDEES AT PRM/NSC-29 MEETING

June 8, 1977

STAT	Name	Agency	Phone Number
	gang Barron	NSC	595-3550
	ED Lowry	JCS	0X-79660
	ARTHUR F. VAN COOK	Dept. of Defense	695-2686
	Robert W. Wells	ICRC	724-1578
STAT	Michael CARDOZO	White House	456-6246
STAT	James E. O'Neil	NARS	523-3132
	NEWAL SOLVIERES	DO5	739-3714
	MARY VAVASOUR	Domestic Staff	456-2973
	Rick Neustadt	" "	456-2647
	Mark B Feldman	State	632-2001
	Jim Ellman	ERDA	353-4338
	John A. Griffin	ERDA	353-3521
	Jeffrey Smith	State	632-9516
	Bill Blair	State	632-0854
	ERIC HIRSCHHORN	OMB/PRP	395-3727
	Ron. Kienlen	OMB/GC	395-5606
	ALBERT E BROWN	OMB	395-3192

PRM 29 WORKING GROUP ASSIGNMENTS

Art Van Look

Classification and Declassification Working Group

E.O. 11652

- Section 1: Security Classification Categories
- Section 2: Authority to Classify
- Section 3: Authority to Downgrade and Declassify
- Section 4: Classification
- Section 5: Declassification and Downgrading
- Section 8: Material Covered by the Atomic Energy Act
- Section 9: Special Departmental Arrangements
- Section 10: Exceptional Cases
- Section 11: Declassification of Presidential Papers
- Section 12: Historical Research and Access by Former Government Officials

PRM 29

- How to promote increased public access to this information through a more rapid and systematic declassification program;
- Overlaps between the new Executive Order and the Freedom of Information Act as amended and the Privacy Act;
- Which information requires protection and for how long and what criteria should be used in making this judgment;
- Which categories of classified material more than 20 years old could be declassified in bulk under appropriate guidelines;
- How the classification system can be simplified to make it more understandable and easier to implement.

- 2 -

Bob Wells

Implementation and Review Working Group

E.O. 11652

Section 6: Policy Directives on Access, Marking, Safekeeping, Accountability, Transmission, Disposition and Destruction of Classified Information and Material

Section 7: Implementation and Review Responsibilities

Section 13: Administrative and Judicial Action

PRM 29

-- How unnecessary and duplicative practices and procedures can be eliminated, reducing expenses;

Should go into other group [-- Whether the Departments and Agencies should prepare classification and declassification guidelines for their employees;

-- What kinds of disciplinary actions can be taken to prevent the misuse of the security classification system by government officials;

-- How best to implement the provisions of the new E.O.

-- Examine the role and effectiveness of the Interagency Classification Review Committee.

PROPOSED WORK SCHEDULE

June 8	Initial meeting of ad hoc committee; organization
June 9	Working Groups begin work; organization
July 6	Working Group options/issues/ recommendations papers due to NSC
July 8	Consolidated drafts to be sent to all agencies by NSC
July 13-15	Ad Hoc Committee meets to decide preferred options to be recommended to principals; narrow and identify issues for decision by principals
End of July	SCC meeting on new classification system recommended by Ad Hoc Committee
August 15	Circulation to agencies of draft Executive Order
August 25	Final Agency comments due to NSC
September 1	Proposed Executive Order to the President
September 15- November 1	Preparation of implementing directive (if decided this is the appropriate implementing instrument)
January 1	Effective date for Executive Order and implementing directive

TAB

sources, but was unable to state explicitly what was needed. They were asked to develop specific examples of what would not be adequately protected.

2. Dr. Gates advised that the SCC dealt with the PRM-29 issues as follows:

a. Advancing systematic review for declassification from 30 to 20 years. The concept was approved, but Archives and the departments/agencies were tasked to make a rough estimate of how much information in the 20 to 30 year-old period is foreign originated or intelligence material unlikely to be released upon review. If much of it falls into those categories (a subjective determination to be made, I gather, by the NSC Staff), the President will probably be asked to except such categories from 20-year declassification review and leave them at the present 30. The SCC consensus was that 10 years should be allowed to catch up on review of material falling with the 20 to 30-year time frame. The SCC generally agreed with Attorney General Bell's statement that continued classification protection after review at the 20-year period must be contingent on the reviewer being able to show that release at that time would be "demonstrably harmful" to the national security.

b. Whether information subject to systematic declassification should be reviewed by sampling or on an item-by-item basis. The sampling approach advocated by Archives was rejected.

c. How foreign-originated material should be declassified. The SCC agreed that such material should be declassified only on the basis of agreements with the foreign governments or international organizations which provided the information.

d. Whether classification guides should be mandatory or optional. The SCC agreed that they would be optional, but within a context that departments and agencies would be expected to develop and use such wherever possible. (Admiral Turner argued for mandatory guides.)

e. Whether the Order should require a balancing test. The SCC agreed that reference should be made in the new Order to the need to weigh the relative merits of public disclosure against classification protection, but that such should not be expressed as a required test. (Messrs. Gates and Neustadt, the Ad Hoc Committee co-chairmen, are to develop language on this.)

3. Dr. Gates advised that SCC members were in favor of tighter controls on compartmentation. Dr. Gates said the SCC consensus appeared to favor having each department and agency head maintain in his office a register

of all compartments or special access programs maintained within his organization. (Admiral Turner spoke in favor of such registries.)

4. Dr. Gates advised of the following procedural matters. All information requested at the SCC meeting was to be provided him not later than 12 August 1977. The NSC Staff would send the President a memorandum on or about 15 August asking him to decide on the location of the Oversight Office, secrecy agreements, and whether foreign-originated and intelligence material should be reviewed for declassification at 30 or 20 years. He said the President's decisions could be expected very soon thereafter, and that we (the drafters) should complete our work on the new Order promptly. He said the draft Order would then be sent out for formal comment, with replies due back in less than the customary 30 days. He noted that it might prove necessary to slip for about a week the scheduled 15 September 1977 date for the President to sign the new Order. Mr. Van Cook asked whether the proposed 1 January 1978 effective date for the new Order could be extended to allow more time to draft the implementing directive for the Order. Dr. Gates asked Messrs. Van Cook and Wells, and myself, to start drafting such now to get the complete package ready as soon as possible.

STAT

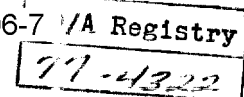


DCI Security Committee

cc: Chairman, COMIREX
Chairman, SIGINT Committee

TAB

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM	
UNCLASSIFIED	CONFIDENTIAL
OFFICIAL ROUTING SLIP	
TO	NAME AND ADDRESS
1	FO/DDA
2	Rm. 7D18, Hqs.
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ACTION	DIRECT REPLY
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CONCURRENCE	INFORMATION
PREPARE REPLY	RECOMMENDATION
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	SIGNATURE
Remarks: <p style="font-size: 1.2em; font-family: cursive;">Who will attend?</p> <p style="font-size: 1.2em; font-family: cursive;">Clare! She was responsible for setting it up.</p>	
FOLD HERE TO RETURN TO SENDER	
FROM: NAME, ADDRESS AND PHONE NO.	DATE
OGC	
UNCLASSIFIED	CONFIDENTIAL
SECRET	



OGC 77-4856
29 July 1977

MEMORANDUM FOR: Deputy Director for Administration
Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Science & Technology
Assistant to the Director for Public Affairs

FROM :
Office of General Counsel

SUBJECT : PRM/NSC-29: Revision of Executive Order 11652

REFERENCE : Briefing for SCC Meeting of 26 July: PRM/NSC-29
fm. dtd. 21 July 1977

1. On 26 July 1977 the Director attended a Security Coordination Committee (SCC) meeting, accompanied by the Deputy General Counsel, in order to resolve issues pertaining to PRM/NSC-29. A brief summary of the results of that meeting are annexed to this memorandum.

2. While most of the recommendations presented to the SCC have been adopted, others have not. In particular, the question regarding systematic declassification of information over twenty-years-old is to be reexamined. Advancing systematic review for declassification from thirty to twenty years involves cost facts which must be considered before the President can make a decision. The SCC members agreed to furnish cost estimates by 12 August.

3. In accordance with this decision, we have been requested to submit a paper regarding categories of information on hand which cannot be declassified at the twenty-year mark, e.g., foreign originated items, sources, methods, biographic data, etc. We must provide an estimate of the volume of such material and what percentage of all classified material this represents. Further, if the longest period prior to systematic declassification were to be twenty years, what percentage of this material would have to retain its classification for at least another ten years, i.e., set forth the difference in the volume and percentage of material which might be declassified after thirty years but which could not be declassified after only twenty years. A memorandum setting forth SCC recommendations

and remaining options will be forwarded for the President's consideration on or about 15 August, and it is expected that the Executive order will be signed before 1 October.

4. This memorandum also confirms that I have scheduled a meeting for 10:00 a.m. Monday, 1 August 1977, in room 7D32 to discuss the SCC meeting, the positions taken by the Director, and any remaining requirements levied upon us. If you have any questions or comments, please contact me at extension

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Attachment

Notes on PRM-29 Principals' Meeting, 7/26/77

(Numbers refer to items discussed and corresponding tabs in briefing book.)

1. SECURITY INFORMATION OVERSIGHT OFFICE - Expression of concern by NSC that OMB not well suited to be the home for this function, although NSC does not want because it is too operational. Hirschhorn was strong for OMB as the home on grounds if the "President's desire to control abuses of classification." Matter left as originally proposed.

2. SANCTIONS - Both NARS (Rhodes) and SecDef (Dan Murphy) concerned with possible chilling effect of sanctions for abuses of classification. NARS withdrew opposition to sanctions pending review of proposed draft language.

3. SECRECY AGREEMENTS - DCI expressed strong preference for required standard agreement but said he would accept required minimum standard agreement to be approved by SIOO. Agreed that condition for secrecy would be access, not employment.

Group agreed to a compulsory secrecy agreement to be drafted by the Attorney General, but this left as an issue for final decision later.

4. COMPARTMENTATION ARRANGEMENTS - DCI suggested registration of all compartments with SIOO. Noted his "Pearl Harbor syndrome" concern that otherwise the right hand might not know what the left hand was doing. Some others shared concern, but found solution difficult. Attorney General pointed out the problem is inter-, not intra-, agency. Need to tie the government together. OMB noted that they were going to make the same suggestion for registration of compartments. No decision on this but chairman noted DCI's position peculiar and he would have to take responsibility of knowing all compartments within the intelligence community, which is somewhat of an interagency problem.

5. INFORMATION WARRANTING PROTECTION - Group agrees that criteria for classification should make specific reference to such things as intelligence sources and methods.

6. PARAGRAPH CLASSIFICATION MARKINGS - DCI reversed position taken by Agency in Ad Hoc Committee and came out for paragraph markings. ERDA against paragraph markings, point out that two unclassified paragraphs sometimes make a classified document. Ad Hoc Committee position, recommendation for paragraph markings, not changed.

7, 8, 9, 10 and 11 - Not discussed per se, except that 8, CLASSIFICATION INFORMATION, and 11, DECLASSIFICATION, discussed in context of 14-20 year systematic declassification, and, re 11, Chairman made clear without dissent from anyone that intelligence agencies must be able to prescribe periods of continued classification upon 20-year classification review.

12. FOREIGN INFORMATION PROVIDED TO THE UNITED STATES - State (Hansell) very strong on protection of foreign information. Concerned that unclassified information provided by foreign governments in confidence must be kept in confidence. (N.B. Hansell didn't seem to focus on the applicability of definition of national security in E.O. 11652, which permits classification of matters whose disclosure would adversely affect foreign relations of the United States. I discussed this with him informally after the meeting, suggesting that most matters could be covered by this provision, and he, upon thinking about it, tended to agree.) Believe participants now understand that disclosure of unclassified information could in itself disclose confidential sources and thus there must be protection for certain information which in itself is unclassified. Chairman asked State for examples of special problems in this area and agreed that Working Group will look at the matter again.

13. Not discussed.

14. 20-YEAR SYSTEMATIC DECLASSIFICATION - The matter of 30 years as opposed to 20 will be re-examined by the Working Group. Chairman asked agencies to provide categories of information on hand which cannot be declassified after 20 years and percentage of classified material this represents. Categories mean such things as foreign originated items, sources and methods, biographic data. He wants to know the general composition of the 20/30 year material. Chairman noted that Working Group should also consider whether a longer period for certain categories of material would vitiate President's position and desire to shorten period.

DCI made his 30-year pitch on the grounds of the onerous burden, since a significant amount of material in intelligence agencies must continue to be classified beyond 20 years. While NARS pointed out that there is cost saving because it is cheaper to retain unclassified material, the Director pointed out that there would be extra cost for intelligence agencies since most material would have to continue to be classified beyond 20 years and the result would be duplication of review at another time.

Foreign government documents - Chairman tasked State Department to make proposals for dealing with foreign governments to get agreed declassification standards and develop a coordinated program.

Document-by-document review - DOJ reversed its position and now favors document-by-document review and NARS agreed sampling is not good enough. Consensus on this.

15. CLASSIFICATION GUIDELINES - The Attorney General wants minimum standard guidelines for the government. He suggests that each agency be required to file proposed guidelines and then attempt will be made to meld them into a single government guideline.

16. BALANCING TEST - Attorney General, after lightly scolding Axelrad for his "personal" memorandum against the balancing test then came out with a position which was pure Axelrad. He was very strong on the danger of a judge reassessing balancing test and thinks it is much better to leave as is. He also suggested that Justice now has balancing test in the standard they apply in determining whether to litigate FOIA cases, that is whether or not disclosure would be demonstrably harmful to the public interest. It was suggested by most others that this was not truly the balancing test. The Group, except for NSC and OMB, who were big on the balancing test, tended to agree that Attorney General's position was the best. Then, in a last-minute, almost offhand suggestion, Dan Murphy more or less torpedoed consensus by suggestion that balancing test be included in criteria for classification and the Attorney General standards in criteria for declassification. The group bought this, although I think most of them did not know what they were buying.

Summary:

Systematic declassification review - Working Group will look at categories of information which agencies believe should be protected for 30 rather than 20 years.

Document-by-document review will be the standard for declassification.

State will work on the question of foreign source information.

Attorney General will propose classification guidelines and SIOO will review.

Balancing test to be written into classification criteria and the Attorney General demonstrably harmful standard into declassification criteria.

Chairman summarized by stating there will be one more Working Group Meeting followed by presentation to the President for decisions and draft E.O., then congressional and public affairs considerations and then final issues to OMB.

TAB

Approved For Release 2009/04/28 : CIA-RDP86-00674R000300040006-7

This package contains:

1. Issues paper for SCC Meeting on PRM/NSC-29
Tuesday, July 26, 1977
2. OGC Comments on Issues Paper (with notation
of action taken by SCC at 26 July 1977 meeting.
3. Notes on PRM-29 Meeting of 26 July 1977
4. Memo from RRB to AI/DDA, dtd. 25 July 1977;
Subj: Issues Paper for SCC Meeting on
PRM/NSC 29 Comprehensive Review of the
Classification System

Approved For Release 2009/04/28 : CIA-RDP86-00674R000300040006-7

29 July 1977

MEMORANDUM FOR: Acting DDA

FROM:

[REDACTED]
O-AI/DDA

SUBJECT: Conversation with [REDACTED] IC Staff, re the
Special Coordination Committee on EO 11652 Revision

Mr. Malanick:

As we discussed the other day, I have attached only the basic information you need to understand the problems: The OGC issues paper submitted to you earlier, the discussion papers with a notation at the bottom of each page indicating the action taken by the Special Coordination Committee (SCC) at their meeting on 26 July. Also attached is an advance copy of Mr. Morrison's notes from the meeting. In some areas his notes differ from what Don passed on to me. At the back of this package is the memo [REDACTED] prepared prior to the SCC meeting. Some of his problems with the issues paper have been resolved since the meeting, but I think his memo gives you a flavor for the concerns of his group and the DDO records people.

As a quick summary, the SCC bucked the following decisions up to the President: 1) the location in the EOP for the new oversight office; 2) the need for secrecy agreements; 3) 20 vs. 30 year declassification for certain categories of information.

I understand OGC is putting a paper together outlining the tasking which resulted from the SCC meeting. The specific item of interest to us is the survey of the volume of records in the 20 to 30 year gap and the portion of that material which is intelligence information and/or foreign originated.

[REDACTED] gave me the following time frames but they seem to differ from what John Morrison indicates. By 20 August: the draft EO out for formal coordination (the normal procedure is to allow 30 days for comments, but the deadline will probably be shortened in this case). By 15 September: a final version to the President for signature, to be effective 1 January '78.

STAT SUBJECT: Conversation with [REDACTED], IC Staff, re the Special
Coordination Committee on EO 11652 Revision

For your information, the drafting committee members are:

Art Van Cook, DOD
Robert Wells, ExDir ICRC
Jeff Smith, State
Ron Kienlen, OMB
[REDACTED]

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According to Don, the drafting is about completed with the exception of the decisions and reversals made at the SCC meeting. He refused to send me an advance copy.

[REDACTED] STAT

ISSUES PAPER

Issues Paper for SCC Meeting on PRM/NSC 29
Comprehensive Review of the Classification System
Tuesday, July 26, 1977

In PRM 29, the President directed the preparation of a new Executive Order to replace Executive Order 11652 that would provide for greater openness in government while effectively protecting national security information. During the past two months, a committee including representatives of the Departments of State, Defense and Justice, OMB, JCS, the DCI, ERDA, the Archivist of the United States, the Counsel to the President, the Domestic Staff and the NSC has developed and examined more than 75 different proposals for altering the present system of classification/declassification with a view to making more information available to the American people.

The SCC meeting on July 26 has been called to review the major changes in the classification system recommended by the interagency committee and to discuss and attempt to resolve four proposed changes on which there were serious differences among agencies. Based on the actions of the SCC with respect to the recommended changes and the disputed issues, a new Executive Order will be prepared and provided to the agencies by OMB for formal comment prior to submission to the President.

The interagency Ad Hoc Committee recommends that the SCC endorse the following major changes in the present information security system:*

Implementation and Administration of the System

① 1. The Interagency Classification Review Committee (ICRC) established under E.O. 11652 will be abolished. A "Security Information Oversight Office" will be created in the Office of Management and Budget. Overall responsibility for policy direction relating to the Executive Order should rest jointly with the Director of OMB and the Assistant to the President for National Security Affairs. The Director of OMB should have responsibility for monitoring and implementing the Order. The Oversight Office would be headed by a full-time director appointed by the President. An "Interagency Advisory Committee" will be established consisting of the present agency membership of the ICRC. The functions of the Oversight Office shall be the same as those of the present ICRC except that it shall act only on appeals involving the declassification of Presidential materials.

* Unless otherwise indicated, all agencies were in agreement.

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Additionally, the Director shall have declassification authority to be exercised in instances in which he determines that continued classification of a document would represent a significant abuse or violation of the Order. "In either case, when the Director of the Oversight Office declassifies a document, this action shall not take effect for ten working days during which time the head of the affected department or agency may appeal the decision to the President through the Assistant to the President for National Security Affairs.

2. Provision should be made in the Order for administrative sanctions for willful or knowing origination or continued classification of information in violation of the Order or implementing directive; for willful or knowing unauthorized disclosure of classified information; or for other violations of the Order as determined by the head of a Department. (National Archives (NARS) opposes this provision.)

3. Adoption by agencies of secrecy agreements as a condition for access to classified information should be optional as it is now. The Oversight Office, in cooperation with the departments, will develop a uniform secrecy agreement the use of which will be recommended to the departments but not mandatory. Adoption of the new agreement would not require reexecution of secrecy agreements by present federal employees. (The DCI's representative voted for this change, but asked that his preference for required secrecy agreements in all agencies be noted)

4. Provisions in the present Executive Order relative to special departmental arrangements for restricting access to certain categories of information should be continued. However, all special access or compartmented programs would be created or continued only by authority of a head of a department or agency, personally and in writing. Such special access programs would be created or continued only on the special finding that: (1) normal safeguarding procedures are not sufficient to limit need to know or access; (2) the size of the compartment (numbers of people requiring access) is reasonable; and (3) the special access controls balance the need to protect the information against the full spectrum of needs to use the information. In addition, all such special access programs shall automatically terminate after three years unless renewed in accordance with the above procedures.

5. Only information the protection of which is in the interest of the national defense or foreign relations of the US (collectively termed "national security") can be classified. This provision, which is in the existing E. O., should not be expanded to include other categories of information. Criteria would be issued (see below) specifying categories of information encompassed by these terms such as, for example, intelligence sources and methods. A number of domestic agencies

page 3, para 2

that now have classification authority but have used it extremely infrequently should not be granted that authority in the new Order. In those rare instances when such departments or agencies need to classify a document, they would be required to ask the Oversight Office to classify for them.

6. Paragraph classification marking will be required, with provisions for the head of a department to seek a waiver from the Oversight Office for specific situations or classes of information. (The DCI and ERDA representatives oppose this and prefer the provision in the present E.O. that makes such marking mandatory "to the extent practicable."

7. The provision in the present order exempting classified material from requests for declassification review for ten years should be eliminated except for Presidential papers. This will bring the E.O. into conformity with the FOIA, except for that one category of information exempted by FOIA. The deadline for action shall remain the same as under the existing Order (30-60 days).

Classification of Information

1. A new classification system should be established which would (a) divorce the period of classification from the level of classification; (b) require an original classifier, within the limits specified in the authority delegated to him, to fix the shortest period of classification which he considers warranted; (c) limit the authority of original Confidential and Secret classifiers to continue classification to six years; (d) authorize original Top Secret classifiers to continue classification beyond six years but not in excess of 20 years; (e) provide for extension of classification beyond 20 years only through review at that time in accordance with guidelines issued by the head of the department; (f) provide that, unless declassified earlier or extended beyond 20 years by the head of a department, information classified pursuant to the Order shall be automatically declassified after 20 years; (g) require that authorities who extend classification of information beyond six years record their identity and reason for their decision; and (h) require that with respect to each original classification, a date be fixed for automatic declassification or for review to determine the need for continued classification. (The present General Declassification Schedule and exemptions therefrom would be abolished. Top Secret, Secret and Confidential would continue to be the only authorized classification categories.)

2. Specific, mandatory classification criteria should be included in the E.O. The criteria would apply equally to all classification categories. Before information could be classified, it would have to be established that

the information falls within one or more of the criteria. Examples now included under the classification categories of Top Secret and Secret would be eliminated. (State and ERDA reserve pending review of the wording of the proposed criteria.)

10 3. Current prohibitions in the E.O. against improper classification will be continued and expanded.

Declassification

11 1. The new E.O. should state that only those records constituting the permanently valuable records of the government should be reviewed. Heads of departments should order the review for possible disposal of all security classified records 20 years old or older which are currently held in storage areas either within the agency or in Federal Records Centers. Records which are found to be unscheduled for some definite future disposition should be scheduled immediately.

12 2. With respect to information and material classified under previous Orders, the new Order would provide that: (a) if the material is already marked for declassification within 20 years of date of origin, it shall be declassified accordingly; and (b) if not so marked, it shall be declassified in accordance with declassification guidelines promulgated by heads of departments as prescribed by the new Order.

13 3. Heads of departments should be required to designate officials at the lowest practicable echelon of command and supervision to exercise declassification authority with respect to classified material in their functional areas of responsibility.

Foreign Information Provided to the US

14 The Order should include provisions providing specific authority to classify information of materials provided in confidence to the US government by a foreign government or international organization and, through classification, to protect the identity of foreign sources (e.g., opposition leaders) as long as the information falls within the general classification criteria.

Standards for Determining Trustworthiness

15 The current E.O. requires that no person be given access to classified information unless determined to be trustworthy. Procedures for determining "trustworthiness" vary widely throughout the government. For

example; the Department of Defense and the CIA have different standards for Top Secret clearances and CIA requires full-scale investigations for all its employees. All agencies participating in the PRM 29 effort agree on the desirability of standardizing procedures for determining trustworthiness. While it was questioned whether such a mandate was within the scope of the new E.O., the Ad Hoc Committee notes that such standardization is partially addressed in the current revision of E.O. 10450. The Committee recommends that the SCC formally endorse the most rapid possible completion of that revision with the expanded aim of achieving standard investigative/adjudicative procedures for determining trustworthiness of civilian and military personnel.

Disputed Issues

1. 20 Year Systematic Declassification.

(Background: The present Executive Order states that all classified information which is 30 years old or more shall be declassified except for information which a head of department specifically determines in writing at that time requires continued protection. The Archivist systematically reviews for declassification all information in his custody more than 30 years old, separating and protecting only that information specifically identified by the head of a department as noted above.)

There is general agreement among agencies that advancing this deadline for systematic declassification from 30 to 20 years would be an important step toward greater openness in government and would make substantially more information available to the American people. The agencies also all agree, however, that implementation of 20-year automatic or systematic review for declassification now and in the future may cost significantly more than the amount presently allocated by the departments to the 30-year system review. (Cost estimates for several agencies are attached.) Thus, in considering the shape of a new classification/declassification system, department and agency heads must recognize that their endorsement of 20 or even 25-year automatic declassification will require increases in budget and personnel for implementation. As pointed out in the discussion of specific options below, there are ways to minimize those costs, but at some risk that documents that should remain classified would be released.

2. Procedures for Reviewing Information for Systematic Declassification.

There is agreement that all agencies should prepare (in consultation with the National Archives) declassification guidelines for use by the Archives. These guidelines would specify categories of information which may require classification beyond the 20, 25 or 30 year cut-off period. All information not listed on these guidelines could be declassified by the Archives.

There is disagreement among agencies as to the procedures by which Archives should be permitted to review and declassify documents:

-- OMB, Archives, the Domestic Staff, the White House Counsel and Justice recommend a review system which would save money but include some risk that information that should remain classified would be released. Their proposal has two elements: (a) guidelines would be written to let the Archives review blocks of documents by sampling or survey techniques. When the

survey turns up sensitive information, a decision would be made by Archives in consultation with the departments whether to examine the records document by document, or to accept the risk and declassify the entire block. This decision would be based on a weighing of the risk of disclosure against the substantial cost of document by document review; (b) these agencies further recommend that material provided in confidence to the US Government by foreign governments or sources be subject to the same declassification procedures as US originated material. They suggest that the foreign material be covered by the same guidelines and be subject to declassification after the same number of years (e.g., 20). They believe that foreign material is so mingled with US-originated information in the files that document by document review of all material would be required if these procedures are not adopted.

-- Defense, JCS, State, ERDA and the DCI believe that the present system of document by document review should be retained with the added requirement that all departments and agencies prepare declassification guidelines for use by Archives. Thus, all blocks of documents which may contain sensitive information would be reviewed document by document to avoid any risk of declassifying a document that should remain classified. Further, these agencies -- with the exception of the DCI -- contend that foreign source information should be reviewed under special, separate guidelines developed in consultation with foreign governments. Further, they argue that the 30-year cut-off for review should be retained for foreign originated material, even if a shorter period is adopted for US documents. They note that foreign governments might object to a change in procedure and also question whether the US can unilaterally declassify information provided in confidence by a foreign government. Adoption of the approach favored by these agencies would require document by document review of all potentially sensitive information, particularly because of the mingling of foreign originated materials.

-- The DCI's representative suggests that foreign government or source documents should be declassified under US declassification guidelines unless separate guidelines agreeable to the US are proposed by foreign governments. However, he supports retention of the 30-year cut-off.

The choice posed in this issue of procedures for systematic declassification is between a cost saving, efficiency and speed of declassification on the one hand and the twin risks of releasing information that should remain classified and possibly offending foreign governments on the other. The saving from the first choice is difficult to estimate and is not included in the attached chart. Archives believes it could be roughly 20 percent of the cost of declassification.

15 3. Classification Guidelines: The existing E.O. is silent with respect to whether departments should prepare and publish general guidance for the classification of particular subjects. Such guidelines have been used by some departments to avoid overclassification and to achieve uniformity in classification decisions. Others argue that in such general areas as foreign relations, intelligence and military operations the formulation of security classification guidelines for general application is difficult. NARS, ERDA, DCI, OMB and the Domestic Council believe the new E.O. should require the promulgation of classification guidelines by departments and agencies. State, Defense, JCS, and Justice believe the E.O. should encourage the preparation of such guidelines but make them optional.

16 4. Balancing Test: Justice, NARS, OMB and the Domestic Staff urge the inclusion of a "balancing test," that is, that the E.O. require a classifier to weigh the relative merits of public access to the information against classification. Defense, JCS, State, ERDA, the DCI and the White House Counsel recommend against inclusion of a balancing test, noting that such a test may be subjective and take different forms throughout the government. There is also concern on their part that inclusion of this as a specific provision could prove troublesome in future litigation should a court seek to have the government document the balancing test. Additionally, these agencies believe such a provision would invite the courts to substitute their judgment in this area for that of the classifier.

TAB 1

SECURITY INFORMATION OVERSIGHT OFFICE

We believe this proposal is desirable. The ICRC, existing nominally under the NSC, has not had a substantial base or support. Further, it is a committee of department representatives charged with monitoring, supervising and acting on appeals from their own and other agencies. The new entity, not being a committee, could act with more efficiency and dispatch than does the ICRC, while agencies' views will be made available through the newly established "Inter-Agency Advisory Committee."

The new SIOO would continue to have authority to monitor performance of agencies in implementing the Executive Order, requiring reports, conducting inspections, etc.

A significant change in the appellate authority of the new SIOO as compared to that of the ICRC is proposed. Under Executive Order 11652, anyone may request from any agency a copy of any classified document. If the document is at least 10 years old and the agency at an initial and an appeal level declines to declassify, the requestor may appeal that agency denial to ICRC. The appeal authority of SIOO would be limited to documents of two categories:

(a) classified documents of any age which are in Presidential libraries, and

(b) any instance in which the Director of SIOO "determines that continued classification of a document would represent a significant abuse or violation of the Order."

Abolition of appellate authority for over 10 year old documents of agencies would appear to be a step backwards in the effort to make more information available to the public. In fact, however, under Executive Order 11652 and the Freedom of Information Act, all documents, whether 10 years old or not, may be appealed to the courts. Further, the practice has been that very little recourse to ICRC has been had except by a few scholars and in many cases, ICRC has upheld the decisions of the denying departments. And finally, it is anticipated that the discretionary authority in the Director of the SIOO will suffice to provide sufficient protection for requests from the public.

SCC Decision: The location of the new oversight (o/s) office will be determined by the President. OMB wanted the o/s office in the NSC structure and the NSC wanted OMB to take it. In any event, all participants agreed the body should be given a substantial grant of authority to accomplish its objectives.

TAB 2

SANCTIONS

There is no significant change in this proposal from the current situation. The May 1972 NSC Implementing Directive (at section X-D) charges departmental committees with "responsibility for recommending to the head of the respective departments appropriate administrative action to correct abuse or violations of any provision of the Order or Directives thereunder, including notifications by warning letter, formal reprimand, and to the extent permitted by law, suspension without pay and removal. Upon receipt of such a recommendation, the head of the department concerned shall act promptly and advise the departmental committee of his action." The proposed change makes it clear that sanctions are to be available for unauthorized disclosures, as well as for overclassifying. It also permits agency heads to specify the violations of the Order which warrant disciplinary action.

Recommend acceptance of this proposal.

SCC Decision: Approved.

TAB 3

SECURITY AGREEMENTS

The Ad Hoc Committee recommendation reflects the view that it would be difficult, if not impossible, to reach agreement among agencies on the terms of a mandatory secrecy agreement. It also takes into account the problems which would be caused by a decision requiring new secrecy agreements of current employees, particularly those who have already signed such an agreement (all CIA employees are in this category). Some employees, including highly valuable employees, might refuse; some agencies lack this authority to terminate because of such refusal; termination of CIA employees for refusal to sign would be a questionable use of the Director's broad termination authority in the National Security Act, etc.

The recommendation would permit agencies to opt not to require secrecy agreements, to require employees to sign agreements developed by the Agency or to require signature to the uniform agreement to be developed by the new SIOO. It is believed this is the strongest position which can be accepted and it is recommended that the Director support it.

STAT SCC Decision: The need for secrecy agreements is to be determined by the President. According to [] the DCI argued for government wide secrecy agreements as a condition of access to classified information. DOJ was tasked to draft a minimum agreement for government wide use--departments and agencies may supplement the standard agreement as they feel necessary. All departments & agencies will require its employees to re-execute new secrecy agreements.

TAB 4

COMPARTMENTATION ARRANGEMENTS

In the work of the Ad Hoc Committee and its subcommittees, it was noted that there are numerous compartments throughout agencies (DoD is said to have hundreds) and it was noted that maintenance and use of compartments is expensive. It was recognized also, however, that compartments are useful devices to implement and enforce the need-to-know rule and the rule requiring that classified information be made available only to persons determined to be trustworthy. The recommendation is designed to make certain that compartments are established only upon the careful determination by the agency head and that he do so only when he determines that normal safeguarding procedures would be inadequate, the number of people having access under a given compartment is reasonable, and that the "special access controls balance the need to protect the information against the full spectrum of needs to use the information." This somewhat unclear language is intended to convey the thought that compartments must not serve to deny information to those who have a need for it. Under the proposal, each compartment would terminate in three years unless renewed.

It is believed the recommendation is desirable in that it reserves to the Director and other agency heads the authority to establish such systems, but also assures that he will do so only on his determination in each case that the cost, access and other factors warrant the use of such a system and that the need for continuing existing compartments will be reexamined every three years.

SCC Decision: The Committee unanimously favored "good tight controls on compartmentation." Each department head will maintain control over his own. The DCI felt that the new o/s office should maintain a government wide register of all compartments, bigot lists, etc. His idea was not accepted by the others.

TAB 5

INFORMATION WARRANTING PROTECTION

This recommendation continues the current definition of national security information, i.e., the definition of information which must be protected. That definition is information "which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States." This definition, with minor variation, has been in use for over 20 years and is now well known. It was suggested by the DCI representative that the definition be modified to specifically include intelligence sources and methods. There were other proposals for modifying it to include such things as information concerning terrorism, narcotics traffic, etc. Because the current definition is well known and because an expansion was thought likely to bring on public and perhaps congressional criticism, it was decided to propose continuation of the current definition. In addition, the Order is to include criteria by which agencies and personnel would determine that information is or is not classifiable national security information. The criteria would make specific reference to intelligence sources and methods information. Recommend support to this proposal.

Recommendation 5 on page 2 also proposes that agencies whose experience indicates very little need for classification authority should not be given such authority. When such an agency has a need to classify, it would request the SIOO to classify the indicated documents.

SCC Decision: Approved.

TAB 6

PARAGRAPH CLASSIFICATION MARKINGS

The current NSC Directive requires that whenever a classified document contains both classified and unclassified information "each section, part or paragraph, should be marked to the extent practicable to show its classification category or that it is unclassified." Some agencies have been diligently complying with this requirement and recently CIA issued a Notice requiring compliance. The special value of paragraph marking is that it drastically reduces the work when declassification review is undertaken. Recommendation 6 would require paragraph classification markings, except that the head of a department could seek a waiver from the oversight office for "specific situations or classes of information."

The DCI and ERDA representatives voted to continue the present provision of Executive Order 11652, that is, paragraph classification markings be required "to the extent practicable." It was our thought that this matter does not warrant the attention of agency heads and the Oversight Office. It does not seem a matter of major importance, in any event.

SCC Decision: The DCI voiced his opinion that the practice be mandatory, not "to the extent practicable" as it is currently. In those cases where it is impractical to classify by paragraph, under the new EO heads of agencies may request a waiver from the o/s office for specific "categories" of information.

TAB 7

REQUESTS FOR DECLASSIFICATION REVIEW
OF DOCUMENTS LESS THAN 10 YEARS OLD

Under the existing Order, requests to agencies by individuals for declassification of documents which are less than 10 years old, need not be acted upon. The Freedom of Information Act, however, requires that they be acted upon and the CIA regulation, for example, provides that a request received under the Order or the Act (or without reference to any legal authority) must be reviewed for declassification regardless of the age of the document. Recommendation 7 therefore would simply bring the Executive Order provision into conformity with the FOIA and, as mentioned, into conformity with the existing CIA practice. It is recommended that this proposal be supported.

Recommendation 7 notes also that the deadline for agency action on a request for declassification review as provided by Executive Order 11652 would remain. Under that Order, agencies are to act within 30 days and, upon a failure to respond within 60 days, the requestor may appeal to ICRC. Retaining those time limits would seem desirable and would permit the head of SIOO to exercise his discretionary authority to review an agency action. See the discussion of the SIOO appellate authority at Tab 1.

SCC Decision: Approved. This brings the new EO into line with the FOIA.

TAB 8

CLASSIFICATION OF INFORMATION

Under Executive Order 11652, information classified Top Secret, reduces to Secret in 2 years, Confidential in 4 years and declassified automatically at the end of 10 years; similar provisions apply to original Secret and Confidential information also. At the time of classification, documents may be exempted from the automatic declassification (General Declassification Schedule), but only by an official who has authority to classify at Top Secret. Generally, only senior officials have this authority and the concept was that subordinates would initiate exemption decisions only in fully warranted situations. In practice it has not worked. I believe many CIAers do not understand the rules. Also, it is difficult to get to senior officials on matters of this nature. It is believed that, in CIA, nearly all classified documents are also marked exempt and that these exemption decisions generally are not made by authorized personnel. Under the Order, exempted documents declassify in 30 years unless the agency head personally continues the classification.

The recommendation would abolish the automatic downgrading of classification, in the belief that that is a meaningless action. The 10 year period reduces to 6, the 30 years reduces to 20.

Both the 6 and 20 year requirements would cause problems for intelligence agencies, but I believe could be lived with. The 20 year provision probably could not be avoided, in view of the 20 year mention in the PRM. It is suggested that we oppose the change from 10 to 6 years for automatic declassification, for the reason that a large portion of intelligence information - particularly sources and methods information - has to be protected well beyond 6 years.

SCC Decision: Approved; with the exception that intelligence agencies may be allowed to keep the 30 year time frame. Under the proposal, Secret and Confidential classifiers may classify for only 6 years; Top secret classifiers may classify a document (at whatever level of classification) for up to 30 years--if our exception is approved by the President. A document classified by a Confidential or Secret classifier is automatically declassified after 6 years and similarly, a document classified by a Top Secret authority is automatically declassified after the 20 or 30 year period.

TAB 9

CLASSIFICATION CRITERIA

(see attached for examples)

There are several points for consideration in the proposal for classification criteria:

(a) It was felt that prescribing specific criteria, at least one of which would have to be applicable in order to classify a particular document, agencies and personnel would be assisted in making the decision that given information would or would not damage national security, if disclosed.

(b) Specific areas of information will be brought within the concept of information the disclosure of which would damage national security and thus require classification. There has been some feeling that the identity of sources or of covert CIA personnel possibly does not warrant classification. There is some thought that terrorism and narcotics traffic should be provided for by criteria.

(c) The use of criteria avoids expanding the definition of national security information

Recommend support for this recommendation, but it might be well to join State and ERDA in reserving until the criteria language is drafted by those who draft the proposed new Executive order.

SCC Decision: All agreed on the desirability of classification criteria, but the agencies reserved judgment until the specific wording is worked out.

(A copy of some suggested criteria is attached.)

(C) Any official who willfully violates this Section shall be subject to such administrative disciplinary action as may be ordered by such official's supervisor pursuant to Section 25 of this Order.

Section 6. Accountability of Original Classification Authorities.

Each original classification authority designated under Section 3, above, shall be held accountable for the propriety of the classifications assigned by him or her. See Section 25 for Administrative and Judicial Action.

Section 7. Classification Responsibilities of Others.

A holder of classified information or material shall observe and respect the classification assigned by the originator. However, if a holder believes that there is unnecessary classification, that the assigned classification is improper or that the information should be declassified sooner than indicated by the originator, he shall so inform the originator who shall thereupon reexamine the classification. Persons who apply derivative classification markings shall, to the maximum extent practicable, verify the current classification of the information or material prior to applying such markings.

*

Section 8. Classification Criteria. A determination to classify shall be made only when the unauthorized disclosure of the information could reasonably be expected to cause a degree of harm to the national security,

after the relative merits of public disclosure have been weighed against protection in the interest of national security, and one or more of the following considerations are present:

(A) The information provides the United States, in comparison with other nations, with a scientific, engineering, technical, operational, intelligence, strategic or tactical advantage related to the national security.

Does it limit to military what about plain old diplomatic?

(B) Disclosure of the information would weaken the position of the United States in the discussion, avoidance or peaceful resolution of potential or existing international differences which could otherwise generate a military threat to the United States or its mutual security arrangements, create or increase international tensions contrary to the national security of the United States, result in an impairment of foreign relations, or lead to hostile political or military action against the United States or its allies, thereby adversely affecting the national security.

(C) Disclosure of the information would weaken the ability of the United States to wage war or defend itself successfully, limit the effectiveness of the armed forces, or make the United States vulnerable to attack.

(D) There is sound reason to believe that other nations do not know that the United States has, or is capable of obtaining, certain information or material which is important to the national security of the United States vis-a-vis those nations.

(E) Disclosure of the information would jeopardize cryptographic devices and systems, intelligence sources and methods, or defense, diplomatic or intelligence operations which are essential to the ability of the United States to defend itself against attack or to conduct foreign relations.

(F) There is sound reason to believe that knowledge of the information would: (1) provide a foreign nation with an insight into the war potential or the war or defense plans or posture of the United States; (2) aid a foreign nation to develop, improve or refine a similar item of war potential; (3) provide a foreign nation with a base upon which to develop effective countermeasures; (4) weaken or nullify the effectiveness of a defense or military plan, operation, project or activity which is essential to the national security.

(G) The information is required by statute to be protected.

Section 9. Identification of Classifying Authority. Material classified under this Order shall indicate on its face the authority for classification.

Section 10. Document Markings.

(A) Each classified document shall show on its face its classification and a date or event for declassification. It shall also show the office of origination, the identification of the classification authority, the date of preparation and shall, by marking or other means, clearly indicate each portion of such material which is not classified and, when there are differences in the degree of classification of portions, the degree of classification of each such portion in order to facilitate excerpting and other uses.

TAB 10

PROHIBITIONS AGAINST IMPROPER CLASSIFICATION

Executive Order 11652 provides that:

"Both unnecessary and over-classification shall be avoided. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security."

Believe the proposal is unobjectionable - but also unnecessary. I would reserve on the issue of expansion, pending the availability of the proposed language.

SCC Decision: New EO will contain similar language.

TAB 11

DECLASSIFICATION

Under Executive Order 11652, agencies are required to systematically review 30 year old documents for declassification, or continued classification. The recommendation (paragraph 1 of page 4) would change this to 20 years. Documents not now marked for declassification in 20 years would be reviewed for declassification "in accordance with declassification guidelines promulgated by heads of departments" (paragraph 2 of page 4). It would provide also that only "permanently valuable records be reviewed." And finally, declassification authority is to be given to officials "at the lowest practicable echelon."

Subject to one point, it is recommended that the proposals be supported. That one point goes to the question of the period of continued classification. Agency and Intelligence Staff representatives are very concerned that much intelligence-related information must be protected well beyond 20 years. We made this point at the Ad Hoc Committee and it was well understood that the "declassification guidelines" to be promulgated by department heads could prescribe the periods of continued classification. I believe this point should be made clear and insisted upon.

SCC Decision: Approved. Agencies should systematically review their material for declassification based on guidelines promulgated by heads of departments. The 20 vs. 30 year review is still an issue (see TAB 14 Comments).

~~(This is a substitute sheet for the Director's Briefing Book and was prepared on 22 July for distribution to recipients of the Briefing Book.)~~

TAB 12

FOREIGN INFORMATION PROVIDED
TO THE UNITED STATES

CIA and other intelligence agencies, particularly State, feel this issue is of extreme importance. At the Ad Hoc Committee, State urged that the new Executive order must contain language which State could cite to foreign government representatives to show that the United States agencies have the authority to protect sources.

The option concerns information furnished by foreign governments as well as information furnished by other foreign sources. Also, it concerns both intelligence sources and other sources.

DDO, in particular, is vitally concerned with protecting foreign liaison sources and other foreign sources, and is anxious to protect the identity of the source of information furnished in confidence without regard to whether the information furnished warrants classification. We are advised that State will propose deletion of the language "as long as the information falls within the general classification criteria" to make this point clear. We believe the option language with the deletion mentioned above meets the DDO's needs and we recommend SCC approval of the option as modified. Without this modification, the name of a confidential source could be disclosed if the information itself does not meet one of the classification criteria.

The option as modified would call for protection of any information furnished in confidence by a foreign government or international organization. Additionally, it would protect the identity of all other confidential sources regardless of whether the information itself may be classified. This recognizes that revealing source identities ipso facto would cause damage to the national security.

OMB and the Domestic Council possibly will object to the idea of protecting the identity of a foreign source when the information itself is not classifiable, even though the information is provided in confidence.

SCC Decision: Foreign information should be declassified only on the basis of agreements with the foreign governments which provided the information.

TAB 13

STANDARDS FOR DETERMINING TRUSTWORTHINESS

There is considerable background to the Ad Hoc Committee's proposal in this area.

Some two years ago the Domestic Council initiated a study, in which DoD took the lead, to review Executive Order 10450, which is a 20-some-year-old Order prescribing security standards for government employment and for access to classified information. CIA and the intelligence agencies were not invited to participate, and there was some feeling that this was done deliberately. In any event, a draft of a new Executive order in that area was developed and was formally circulated by OMB in the latter months of the Ford Administration. CIA and other agencies voiced a number of objections, and the draft order was not submitted to the President, and of course was not issued. CIA objections were that the order impinged on the Director's authority to establish security standards for access to sources and methods information, the standards for security clearances were not sufficiently high, the order possibly impinged on the Director's authority to reject applicants and to terminate employees, etc.

In the course of the deliberations by the subcommittees of the PRM-29 Ad Hoc Committee, DoD again proposed that the order to replace Executive Order 11652 also would establish standardized procedures for determining trustworthiness. Over DoD's objections, the Ad Hoc Committee concluded that this suggestion was not properly within the PRM-29 charter, but that the current review of last year's work on Executive Order 10450 by OMB and the Civil Service Commission, and the executive branch agencies generally, should be accelerated and Executive Order 19450 should be modernized and reissued at an early date.

Recommend support for this proposal.

SCC Decision: Not discussed.

TAB 14

20-YEAR SYSTEMATIC DECLASSIFICATION
(pp. 6-7)

Executive Order 11652 requires that classified documents be reviewed for declassification when they become 30 years old. Pages 6 and 7 discuss the pros and cons of a decision to change that to 20 years. It is generally agreed that a 20 year requirement would advance the cause of openness, but there are cost and risk questions. Also, there is some concern that information furnished by foreign governments should be subject to different rules.

One proposal is that agencies draw up guidelines which the Archivist would use in reviewing by sampling or survey techniques. When the survey revealed sensitive information, the Archivist, in consultation with the agency head, would determine whether to proceed with document-by-document review.

The other proposal, supported by CIA, calls for document-by-document review.

The Ad Hoc paper recognizes that the relative costs in the two procedures is hard to estimate. The risk of disclosing information which should remain protected is also hard to judge.

I believe we must insist on authority to review document-by-document. It seems probable that the classified files of intelligence agencies would include numerous identifications of sources and methods, etc. which must remain protected.

The Ad Hoc paper indicates some agencies would handle declassification review of information furnished by foreign governments under the same rules as for other classified information. Others - including State and the DCI - would opt for document-by-document review, based on guidelines developed in conjunction with the foreign governments. (The Ad Hoc paper indicates the DCI representative [redacted] believed these documents should be declassified on the basis of United States guidelines. In fact, it seems to me essential that the United States establish guidelines only in consultation with the foreign governments.)

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As a practical matter, perhaps the SCC should decide that the Executive order should not specify the review procedures, but should set

dates for completion of reviews and leave it to the agencies to determine their own procedures, based on the nature and sensitivity of the information, resources available, etc. It would be foolish to require agencies to continue to use document-by-document review procedures if experience shows that only a microscopic percent require continued classification.

SCC Decision: The 20 year declassification concept was approved BUT NARS and the large document holders should get together to determine the volume of foreign originated and/or intelligence information contained in the records in the 20 to 30 year time frame which is unlikely to be released upon review. If a significant portion of this material falls into the foreign originated or intelligence categories, the President will be asked to exempt the holding agencies from the 20 year limit and continue with the 30 year review. (The NSC Staff will determine what constitutes a "significant portion.")

For that information which moves from the 30 year time frame to the 20, the SCC approved a 10 year catch-up.

AG Bell stated that for the head of an agency to extend classification beyond the 20 years (or 30 depending on the type of information), the decision to do so must be contingent upon a decision that the release would cause "demonstrable harm" to the national security. Any agency going into litigation on such old documents which could not prove "demonstrable harm" (undefined) would do so without DOJ.

Documents will be reviewed on a document-by-document basis and not by a sampling technique as proposed.

TAB 15

CLASSIFICATION GUIDELINES

It is proposed that agencies issue guidelines to assist personnel in making classification decisions. Some agencies would require such guidelines, others would encourage but not require the issuance of guidelines. On balance, I would favor the latter.

SCC Decision: Agreed guidelines should be optional but agencies should be encouraged to develop them where they could. Reportedly, the DCI voiced the opinion that such guides should be mandatory and specific.

TAB 16

BALANCING TEST

The issue is whether to require classifiers to weigh the damage to national security against the desirability of public access. As indicated, the national security agencies, including the DCI, are opposed. The proposal seems to me unworkable. It is desirable that all government information be made public. For various reasons, some, including national security information, cannot be. To require the DoD or NSC official, for example, to determine the relative claims of national security and the public's right to know is an impossible burden. Further, it would vastly complicate and hamper the government's position in litigation.

In the Ad Hoc deliberations, Justice favored the balancing test. However, the Chief of Information and Privacy Section, Civil Division, Department of Justice, has forwarded to the Ad Hoc chairmen a letter ~~(attached hereto)~~ urging that the balancing test would be difficult, burdensome and unworkable.

Recommend the balancing test be rejected.

SCC Decision: Reportedly, AG Bell's comment on this proposal was that it is good politics but damn bad law. It was agreed that the new EO should contain a statement on the need to balance national security and public access but that it not be a condition or basis for classification.

Approved For Release 2009/04/28 : CIA-RDP86-00674R000300040006-7

MORRISON'S NOTES FROM MITG

Approved For Release 2009/04/28 : CIA-RDP86-00674R000300040006-7

Notes on PRM-29 Principals' Meeting, 7/26/77

(Numbers refer to items discussed and corresponding tabs in briefing book.)

1. SECURITY INFORMATION OVERSIGHT OFFICE - Expression of concern by NSC that OMB not well suited to be the home for this function, although NSC does not want because it is too operational. Hirschhorn was strong for OMB as the home on grounds if the "President's desire to control abuses of classification." Matter left as originally proposed.

2. SANCTIONS - Both NARS (Rhodes) and SecDef (Dan Murphy) concerned with possible chilling effect of sanctions for abuses of classification. NARS withdrew opposition to sanctions pending review of proposed draft language.

3. SECRECY AGREEMENTS - DCI expressed strong preference for required standard agreement but said he would accept required minimum standard agreement to be approved by SIOO. Agreed that condition for secrecy would be access, not employment.

Group agreed to a compulsory secrecy agreement to be drafted by the Attorney General, but this left as an issue for final decision later.

4. COMPARTMENTATION ARRANGEMENTS - DCI suggested registration of all compartments with SIOO. Noted his "Pearl Harbor syndrome" concern that otherwise the right hand might not know what the left hand was doing. Some others shared concern, but found solution difficult. Attorney General pointed out the problem is inter-, not intra-, agency. Need to tie the government together. OMB noted that they were going to make the same suggestion for registration of compartments. No decision on this but chairman noted DCI's position peculiar and he would have to take responsibility of knowing all compartments within the intelligence community, which is somewhat of an interagency problem.

5. INFORMATION WARRANTING PROTECTION - Group agrees that criteria for classification should make specific reference to such things as intelligence sources and methods.

6. PARAGRAPH CLASSIFICATION MARKINGS - DCI reversed position taken by Agency in Ad Hoc Committee and came out for paragraph markings. ERDA against paragraph markings, point out that two unclassified paragraphs sometimes make a classified document. Ad Hoc Committee position, recommendation for paragraph markings, not changed.

7, 8, 9, 10 and 11 - Not discussed per se, except that 8, CLASSIFICATION INFORMATION, and 11, DECLASSIFICATION, discussed in context of 14-20 year systematic declassification, and, re 11, Chairman made clear without dissent from anyone that intelligence agencies must be able to prescribe periods of continued classification upon 20-year classification review.

12. FOREIGN INFORMATION PROVIDED TO THE UNITED STATES - State (Hansell) very strong on protection of foreign information. Concerned that unclassified information provided by foreign governments in confidence must be kept in confidence. (N.B. Hansell didn't seem to focus on the applicability of definition of national security in E.O. 11652, which permits classification of matters whose disclosure would adversely affect foreign relations of the United States. I discussed this with him informally after the meeting, suggesting that most matters could be covered by this provision, and he, upon thinking about it, tended to agree.) Believe participants now understand that disclosure of unclassified information could in itself disclose confidential sources and thus there must be protection for certain information which in itself is unclassified. Chairman asked State for examples of special problems in this area and agreed that Working Group will look at the matter again.

13. Not discussed.

14. 20-YEAR SYSTEMATIC DECLASSIFICATION - The matter of 30 years as opposed to 20 will be re-examined by the Working Group. Chairman asked agencies to provide categories of information on hand which cannot be declassified after 20 years and percentage of classified material this represents. Categories mean such things as foreign originated items, sources and methods, biographic data. He wants to know the general composition of the 20/30 year material. Chairman noted that Working Group should also consider whether a longer period for certain categories of material would vitiate President's position and desire to shorten period.

DCI made his 30-year pitch on the grounds of the onerous burden, since a significant amount of material in intelligence agencies must continue to be classified beyond 20 years. While NARS pointed out that there is cost saving because it is cheaper to retain unclassified material, the Director pointed out that there would be extra cost for intelligence agencies since most material would have to continue to be classified beyond 20 years and the result would be duplication of review at another time.

Foreign government documents - Chairman tasked State Department to make proposals for dealing with foreign governments to get agreed declassification standards and develop a coordinated program.

Document-by-document review - DOJ reversed its position and now favors document-by-document review and NARS agreed sampling is not good enough. Consensus on this.

15. CLASSIFICATION GUIDELINES - The Attorney General wants minimum standard guidelines for the government. He suggests that each agency be required to file proposed guidelines and then attempt will be made to meld them into a single government guideline.

16. BALANCING TEST - Attorney General, after lightly scolding Axelrad for his "personal" memorandum against the balancing test then came out with a position which was pure Axelrad. He was very strong on the danger of a judge reassessing balancing test and thinks it is much better to leave as is. He also suggested that Justice now has balancing test in the standard they apply in determining whether to litigate FOIA cases, that is whether or not disclosure would be demonstrably harmful to the public interest. It was suggested by most others that this was not truly the balancing test. The Group, except for NSC and OMB, who were big on the balancing test, tended to agree that Attorney General's position was the best. Then, in a last-minute, almost offhand suggestion, Dan Murphy more or less torpedoed consensus by suggestion that balancing test be included in criteria for classification and the Attorney General standards in criteria for declassification. The group bought this, although I think most of them did not know what they were buying.

Summary:

Systematic declassification review - Working Group will look at categories of information which agencies believe should be protected for 30 rather than 20 years.

Document-by-document review will be the standard for declassification.

State will work on the question of foreign source information.

Attorney General will propose classification guidelines and SIOO will review.

Balancing test to be written into classification criteria and the Attorney General demonstrably harmful standard into declassification criteria.

Chairman summarized by stating there will be one more Working Group Meeting followed by presentation to the President for decisions and draft E.O., then congressional and public affairs considerations and then final issues to OMB.

STAT



MEMO

~~CONFIDENTIAL~~

25 July 1977

MEMORANDUM FOR: Assistant for Information, DDA
VIA: Chief, Information Systems Analysis Staff
FROM:
Records Review Branch/ISAS
SUBJECT: PRM-29 and the Revision of Executive
Order 11652
REFERENCE: Issues Paper for SCC Meeting on PRM/NSC 29
Comprehensive Review of the Classification
System

1. (U) The following represents the thoughts and recommendations of the Records Review Branch including the four Directorate representatives concerning the reference paper. The comments are keyed to the paragraphs.

2. (U) In addition, I have included a brief description of the Agency's Declassification Program at the end.

(U) Security Information Oversight Office (Tab 1)

Recommend acceptance of this proposal.

(U) Sanctions (Tab 2)

Although difficult to enforce, recommend acceptance of this proposal.

(U) Secrecy Agreements (Tab 3)

Recommend acceptance of this proposal.

(U) Compartmentation Agreements (Tab 4)

Recommend acceptance of this proposal although I believe that it should be expanded to give the DCI control of all compartmentation arrangements dealing with foreign intelligence.

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(U) Information Warranting Protection (Tab 5)

Concur with the continued use of the term "National Security" as the definition covering material requiring continued protection.

(U) Paragraph Classification Markings (Tab 6)

Concur with the proposal to require paragraph classification marking. Believe ERDA and [] position to make marking mandatory "to the extent practicable," would make the entire proposal rather meaningless.

25X1

(U) Requests for Declassification Review of Documents Less than Ten Years Old (Tab 7)

Recommend that this proposal be supported.

(U) Classification of Information (Tab 8)

- a. Limiting the period of classification of confidential and secret material to six years unless classified by an individual possessing top secret authority:

Strongly believe that the CIA should seek an exemption from this policy or that the Agency be prepared to increase the number of top secret classifiers. Do not think that six years would be adequate protection for much of the secret and confidential material now being classified by individuals who do not have a top secret classification authorization.

- b. The 20 Year Time Limit for Review and Declassification:

Over and over again, it has been pointed out that the new 20 year time limit cannot be avoided since it is mentioned in the PRM; however, if one takes time to read the PRM, you find that the only place where 20 years is mentioned is the below statement:

"The committee should consider, which categories of classified material more than 20 years old could be declassified in bulk under appropriate guidelines."

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In no place does the PRM state that a 20 year time limit for the review of all classified material is requested by the President. What we have, I fear, is a group of individuals trying to win presidential favor by exceeding the goals set by the President in the PRM.

In any event, I strongly oppose a 20 year time limit from a practical point of view. I believe that Agency management should be made aware of the fact that such a reduction in the time frame would present the Agency with an instant backlog of an estimated 28,500,000 classified documents. The manpower and resources required to eliminate this backlog would unnecessarily tax the Agency and interfere with its primary objective of producing intelligence.

Strongly recommend the retention of the 30 year limit.

c. Automatic Declassification after 20 (or 30) years:

First, believe that this should be changed to read mandatory review rather than automatic declassification and secondly, that due to the large volume of records to review, it would be impossible to review each document exactly on the 20th (or 30th) year from its origination. Therefore, strongly recommend that the new executive order be worded so that an agency would not be penalized if it was striving to obey the time requirement by conducting a systematic review but had failed to review a part of its records within the required time.

d. Review to be conducted in accordance with guidelines issued by the head of department (i.e., DCI):

Believe that the development of guidelines approved by the DCI is the only practicable way to conduct the declassification review. The current system of having the head of department verify by signature each record that should retain its classification is unworkable and ridiculous. (See Tab 15)

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(U) Classification Criteria (Tab 9)

Recommend that CIA reserve judgement until exact language is drafted. I do, however, have some comments about the examples supplied.

a. Para B, line 4: Remove the word military. This unnecessarily limits the type of possible threat to the United States.

b. Para E, line 4: After the word attack, add collect foreign intelligence information, or to conduct foreign relations.

c. Para G: Change to read: The information is required by statute, treaty or international agreement.

(U) Prohibitions Against Improper Classification (Tab 10)

Recommend continuance use of present executive order language. This provides sufficient safeguard against improper classification. CIA should reserve judgement of any expansion of the wording until after the draft has been written.

(U) Declassification (Tab 11)

It is very important that the new executive order state that only permanent records are to be reviewed for declassification. It would be absurd to waste time and resources reviewing records scheduled for destruction. Fully concur with the recommendation to include such a statement.

Along the same lines, it may also be of value to allow agencies to identify categories of records (e.g., Agent 201 files) that would not be subject to review and declassification since the percentage of material that could be released would be negligible. In the CD-2 Panel this was the unanimous opinion; however, like many other items it has been eliminated from the discussion. (Even though this was felt by the panel members to be part of the answer to the question asked by the PRM about bulk declassification.)

While on the topic of bulk declassification, RRB has conducted a brief survey to see if bulk declassification is possible within the Agency. Unfortunately, we have found that the Agency's records are so mixed together, that bulk declassification is impossible.

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(U) Foreign (Government) Information Provided to the United States (Tab 12)

Before discussing this matter, I would like to make a couple of points:

- a. The review and declassification of foreign material is not mentioned in the PRM as an objective.
- b. Having sat on the initial CD-2 Panel, I know that this amendment was voted down six to one yet was still presented to the Ad Hoc Committee as a desirable recommendation by the representative of the National Archives.
- c. The sole purpose of this amendment is to aid the National Archives in the "administration" of foreign material. The individuals who support this motion freely admit that there is a possibility that foreign relations could be damaged but feel that it is worth the risk!

With the above in mind, I strongly urge that the CIA opt for the exclusion of foreign material from the declassification review. (It is excluded in the present executive order.)

The key element in collecting foreign intelligence is to establish a mutual trust and confidence with the source that he or she will be protected from disclosure. If an executive order is printed and signed by the President that states that foreign source material will be treated by U.S. criteria and standards for possible declassification, this confidence and trust will be destroyed and will severely hurt our intelligence gathering capability regardless of any additional verbal or written guarantees the Agency provides.

(U) Standards for Trustworthiness (Tab 13)

Do not believe that this subject belongs in an executive order dealing with classification and declassification. This topic has been pushed by the committee chairman, Mr. Art VanCook, of the DOD for personal reasons.

(U) 20-Year Declassification (Tab 14)

The only possible way to obey the executive order and to provide adequate protection for classified CIA material is for trained CIA personnel to conduct a document by document review based upon review guidelines approved by the DCI.

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The Agency cannot rely upon the National Archives to conduct this review and in fact, has been so informed by Mr. Edwin Thompson, Chief of the Declassification Branch at the National Archives. He simply does not have enough qualified personnel. Now there may be exceptions to the above, such as the relatively non-sensitive FBIS material which is already held by NARS. Guidelines are currently being prepared by the Agency that would permit NARS personnel to review this material. But this is an exception!

To support RRB's contention that a declassification review within the Agency will be a rather complex effort, we recently conducted a detailed records survey of the 1946-1956 material held at the Agency's Archives Section. These records were chosen since they had been "retired" and, therefore, from a records management standpoint, in the best condition as far as shelf lists, supporting documentation, etc. Our findings were as follows:

- a. Many records were improperly retired resulting in temporary files being mixed with the permanent ones.
- b. No one really knew what was in the Archives including many records officers.
- c. The volume of records to review greatly exceeded expectations.
- d. There is a horrible blend of good permanent information mixed with worthless junk!

Because of the less than satisfactory condition of the files and the blend of material contained in them, strongly recommend that the Agency's records review be conducted only by trained, experienced CIA personnel.

(U) Classification Guidelines (Tab 15)

The Records Review Branch in cooperation with various Agency Office Staffs, is in the process of writing declassification guidelines. As of this writing, those of the DDA are almost complete and it is estimated that those of the DDI and DDS&T will be completed by the end of August. It should be noted that guidelines are "living documents" subject to constant change. We picture our guidelines in the same sense. This idea is reinforced by Dr. David Rudgers, an RRB staff member. Dr. Rudgers spent eight years working at NARS, four of which he was a section chief with the Declassification Division. He probably has more detailed knowledge and experience in the field of declassification than anyone else within the Agency.

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We strongly support the concept of declassification guidelines with the following reservations:

- a. That Agency guidelines be used by Agency reviewers and not by National Archives personnel except when reviewing relatively non-sensitive material (e.g., FBIS).
- b. The concept of changing or "living" guidelines be accepted.
- c. Guidelines developed for review of Agency material be specifically internal documents and not be coordinated with NARS for approval. Separate guidelines for properly cleared and trained NARS personnel can be developed as the need arises, as in the case of FBIS.

(U) Balancing Test (Tab 16)

A completely ridiculous and unworkable concept which CIA should oppose at all costs.

The opposition to the "balancing test" cannot be too strongly stated. If any judgement would be "arbitrary and capricious" it is a judgement based on subjective criteria by a person not only uninformed in intelligence subjects but downright hostile to the intelligence community. I am worried not only about the problems of a judge or a DOD and NSC official trying to make such a subjective judgement, but also about a reference archivist making such a decision, since thousands of Agency documents are scattered in files retired to NARS and the Presidential Libraries. The tab writer refers to the idea being "difficult, burdensome, and unworkable". Mr. Axelrad dwells on litigation problems. We should, I think, say that, from an intelligence standpoint, the "balancing test" is downright dangerous. Stressing the obvious is very important here.

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THE RECORDS REVIEW BRANCH

Established: 2 May 1977

Location: 6C25 Headquarters

Current Staff: Five Full-time Employees

Specific Responsibility: Systematic review and declassification
of 30 year old classified Agency records.

Project Objective: Compliance with Executive Order 11652 and
11905 to make, "information regarding the
affairs of Government readily available to
the public."

Current Objectives:

1. Prepare declassification guidelines.
2. Coordinate with the Records Administration Branch, a records survey for the purpose of separating Agency records into temporary and permanent files based upon approved General Records Schedules.
3. Establish liaison with declassification units in other Government Departments in order to work out problems of mutual concern.

(The first two objectives must be completed before an actual declassification review may begin.)

Major Problems:

1. The large volume of records to review. There is an estimated 1,500,000 per year for the 1946-50 period and 3,500,000 per year for the 1951-56 period.
2. The many different types of filing systems within the Agency.
3. The duplication of a large number of records and the need for a consistent judgement during the review process due to both legal and political considerations.
4. The scattered locations of the records to be reviewed.
5. The large numbers of CIA documents held by other Agencies for which we retain review responsibility.

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6. Existing backlog of documents more than 30 years old.
(1946-47 material)

Requirements: Guidance from Agency Management Concerning:

1. What resources are to be committed for this task?
 - a. personnel
 - b. money
 - c. equipment (e.g. computers)
2. How is material to be released to NARS? the Public?
3. Are there any special instructions concerning the review?

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